

## **GUARANTY**

THIS GUARANTY (the "Guaranty") is executed effective as of [January 1], 2014, by CITY OF HOLLYWOOD ("Guarantor" or "City"), having an address at 2600 Hollywood Boulevard, Hollywood, Florida 33032, Attention: City Manager), and The Bank of New York Mellon Trust Company, N.A. ("Trustee"), having an office at 10161 Centurion Parkway, Jacksonville, FL 32256.

## **RECITALS:**

A. In July 2009, the Guarantor issued a Request for Proposals for the redevelopment of the site known as Johnson Street for a resort hotel project. After a competitive process, which included public hearings and deliberations by the Mayor and City Commission of the City, in April 2010 the Guarantor selected Margaritaville Hollywood Beach Resort, LLC, a Florida limited liability company (the "Original Developer") to negotiate the basic terms and conditions for such redevelopment.

B. Pursuant to the authorization and direction of the City Commission, the appropriate officers of the Guarantor proceeded to negotiate with the Original Developer, the basic terms and conditions for the redevelopment of said Johnson Street parcel and the development of a resort hotel, and such terms and conditions are set forth in that certain Memorandum of Understanding between the City, the Original Developer and the Hollywood Community Redevelopment Agency (the "CRA") approved by the City Commission on July 7, 2010 by Resolution Number R-2010-201 (the "MOU").

C. In accordance with the terms and provisions set forth in the MOU and pursuant to the authorization of the City Commission, the appropriate officers of the Guarantor worked with representatives of the Original Developer in the preparation of a Development Agreement and Ground Lease (the "Original Lease") which provided for the leasing by the Guarantor to the Original Developer of certain real property for the construction, development, operation, and maintenance of the improvements more specifically described in the Original Lease, which improvements include the "Public Parking Component," to be owned and operated by a community development district.

D. On January 19, 2011, the City Commission, by Resolution Number R-2011-014, approved the execution of the Original Lease by the appropriate City officials on behalf of the Guarantor, which Original Lease was dated as of February 9, 2011.

E. In connection with the admission of Starwood Capital Group as an equity partner, the Original Developer has been restructured as a Delaware limited partnership, and is now known as Margaritaville Hollywood Beach Resort, L.P. (the "Developer").

F. Since the Original Lease was entered into, certain facts and circumstances relating to the Leased Property and the rights and obligations of the City and the Developer changed, and as a result, on May 29, 2013, the City Commission, by Resolution Number R-2013-132, approved the execution of an Amended and Restated Development Agreement and Ground Lease, dated as of June 21, 2013 (the "Lease"), by appropriate City officials on behalf of the Guarantor.

G. To assist in financing the Public Parking Component and related public improvements, the Developer petitioned the Guarantor to create Hollywood Beach Community Development District I (the "District"), encompassing approximately 5.13 acres of land as described in the Lease (the "District Lands").

H. The District was established by Ordinance of the City Commission effective June 1, 2011 pursuant to the provisions of Chapter 190, Florida Statutes (the "Act").

I. Exhibit K to the Lease provides for the execution of a guaranty of replenishment of the Debt Service Reserve Fund, a trust fund to be established and held by the Trustee under a Master Trust Indenture, as supplemented, authorizing and securing revenue bonds to be issued by the District to finance construction of the Public Parking Component.

J. On November 18, 2011 the District filed a Complaint for Validation of an Amount Not Exceeding \$37,000,000 Hollywood Beach Community Development District I Special Assessment Revenue Bonds, in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Circuit Court"), Case No. 11028737, in the case styled Hollywood Beach Community Development District I, a local unit of special-purpose government organized and existing under the laws of the State of Florida, Plaintiff vs. The State of Florida and all the Taxpayers, Property Owners, and Citizens of Hollywood Beach Community Development District I, Et AL., Defendants ("Bond Validation Action").

K. Final Judgment in the Bond Validation Action was entered on February 28, 2012, and the appeal period expired on March 30, 2012 without an appeal having been filed.

L. Pursuant to the Final Judgment, the Circuit Court has ruled that the Guarantor and the Trustee have the power and authority to enter into this Guaranty.

M. The District has on the date hereof issued its Taxable Revenue Bonds (Public Parking facilities Project), Series 2014 (the "Bonds") to finance the Public Parking Component, as defined in the Lease (the "2014 Project"), pursuant to the Act and a Master Trust Indenture, as supplemented by a First Supplemental Trust Indenture, both dated as of [January 1, 2014] (collectively, the "Indenture") between the District and the Trustee.

N. The Trustee has, pursuant to the Indenture, created the Debt Service Reserve Fund, and a Series 2014 Debt Service Reserve Account therein (the "Series 2014 Reserve Account"), and deposited the sum of [\$ ] therein from the proceeds of the Bonds (initially, the "Series 2014 Reserve Account Requirement").

O. The Developer and the Guarantor will derive a substantial benefit from the issuance of the Bonds and the financing of the 2014 Project by the District inasmuch as without the financing of the 2014 Project, the Developer would not be in a position to develop the District Lands.

P. In order to promote the health, safety and welfare of the residents of the City, it is desirable and serves a valid public purpose for the Guarantor to enter into this Guaranty, thereby facilitating and promoting the availability of public parking within the geographic limits of the City, which public parking will alleviate vehicular congestion on the streets and provide increased and safe parking facilities to residents of the City and its visitors.

Q. Capitalized terms used herein and not specifically defined herein shall have the respective meanings ascribed to such terms in the Lease or the Indenture.

R. Guarantor is entering into this Guaranty to induce the District to issue the Bonds and construct or acquire the 2014 Project.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated in to the operative provisions of this Guaranty by this reference, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby conclusively acknowledged, Guarantor hereby agrees as follows:

### ARTICLE I NATURE AND SCOPE OF GUARANTY

**Section 1.1 Guaranty Obligation.** Upon issuance of the Bonds, Guarantor hereby irrevocably agrees to pay to the Trustee from legally available Non-Ad Valorem Revenues, as hereinafter provided, upon the occurrence and continuation of a Guarantor Payment Period (as defined in Section 1.4 hereof), for the benefit of the owners of the Bonds, an amount necessary to cause the moneys in the Series 2014 Reserve Account to be equal to the Series 2014 Reserve Account Requirement. A Guarantor Payment Period shall exist and give rise to a payment obligation of the Guarantor hereunder, and the Guarantor shall pay to the Trustee, but only from the sources of funds described in Section 1.2 hereof, on any Business Day within sixty (60) days from the date of the next City Commission meeting following receipt of notice and demand for payment from the Trustee in accordance with the Indenture. The Trustee may rescind or amend such notice to Guarantor at any time prior to Guarantor making a payment hereunder, to reflect amounts that have become available to the Trustee, since the provision of such notice and demand to Guarantor, to restore the balance in the Series 2014 Reserve Account to the Series 2014 Reserve Account Requirement.

Notwithstanding the foregoing, at any time a payment obligation shall arise hereunder, the Guarantor may elect in its sole discretion to extraordinarily optionally redeem at any time upon thirty (30) days' prior written notice, all of the Bonds then outstanding at a price of 100% of the remaining principal amount thereof, together with accrued interest to the redemption date. "Business Day" means (a) any day other than a Saturday or Sunday or legal holiday or a day on which the designated office of the District, the Trustee, the Registrar or any Paying Agent is closed or any day that the payment system of the U.S. Federal Reserve is not operational, or (b) a day on which the Guarantor's office is authorized or required by law or executive order to remain closed. All payments by the Guarantor are to be in immediately available funds.

**Section 1.2 Nature of Guaranty.** This is a continuing guaranty and the obligations of Guarantor hereunder are and shall be, subject to the existence and continuation of a Guarantor Payment Period, absolute, continuing, unconditional and irrevocable under any and all circumstances, and shall not be subject to any counterclaim, recoupment, set off, reduction or defense based on any claim that the Guarantor or the Trustee may have against the District or any other person or that the District may have against any other person, and such obligations shall remain in full force and effect until the Bonds have been paid in full or legally defeased. In addition, until the Bonds have been paid in full, Guarantor waives, to the extent permitted by applicable law, (a) any right of subrogation, reimbursement, indemnification and contribution

(contractual, statutory or otherwise) including, without limitation, any claim or right of subrogation under the Bankruptcy Code (Title 11, United States Code) or any successor statute, arising from the existence or performance of this Guaranty, (b) any right to enforce any remedy that the Trustee now has or may hereafter have against the District, and (c) any defense arising by reason of any disability or other defense of the District or Guarantor including, without limitation, fraud, duress, failure of consideration, breach of representations and warranties or other agreements, payment, statute of frauds, statute of limitations, accord and satisfaction and usury, or the cessation from any cause whatsoever of the liability of the District. The Guarantor further waives defenses based on amendments, waivers or forbearance affecting the Bonds, the District's lack of authority to issue the Bonds or the invalidity of the Bonds or lack of performance of its obligations under the Indenture, delay by the Trustee in making a claim, and lack of complete disclosure of matters relevant to Guarantor. No action or inaction by the District, including any nonperformance or failure to satisfy any condition precedent by the District under the Indenture, shall affect the Guarantor's obligations under this Guaranty.

The obligation of the Guarantor hereunder will not constitute a general debt, liability or obligation of the Guarantor within the meaning of any constitutional or statutory limitation. Neither the faith and credit nor the taxing power of the Guarantor is pledged to the payment of the Guarantor's obligations hereunder and no one seeking recourse hereunder shall ever have the right to compel any exercise of any ad valorem taxing power of the Guarantor, directly or indirectly, to enforce such obligations. However, the City hereby covenants to budget, appropriate and pay to the Trustee, within sixty (60) days of the occurrence of the City Commission meeting next following receipt of the notice of deficiency from the Trustee referred to in Section 1.1 above while the Bonds are outstanding, from all legally available Non-Ad Valorem Revenues of the City, sufficient Non-Ad Valorem Revenues to enable the Trustee to replenish the balance in the Series 2014 Reserve Account to the Series 2014 Reserve Account Requirement. Notwithstanding the provisions for notice herein, the Guarantor waives notice of acceptance of this Guaranty, notice of presentment and demand for payment and any other requirement for notice to Guarantor or the District, it being the intention of the parties hereto that the failure to give such notice shall in no way diminish, reduce or otherwise affect the Guarantor's obligations hereunder. The Trustee may rescind or amend such notice to Guarantor at any time prior to Guarantor making a payment hereunder, to reflect the amounts that have become available to the Trustee, since the provision of such notice to Guarantor, to pay the 2014 Bonds.

This Guaranty is cumulative to the extent not paid, and shall continue until such legally available Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make the payments described above shall have been budgeted, appropriated and actually paid. Except with respect to such legally available Non-Ad Valorem Revenues deposited with the Trustee, this Guaranty does not create a lien upon or pledge of the Non-Ad Valorem Revenues of the Guarantor nor does it preclude the City from pledging in the future all or any specified portion of its Non-Ad Valorem Revenues, nor does it give the Trustee or the Bondholders a prior claim on all or any specified portion of the Non-Ad Valorem Revenues of the Guarantor as opposed to claims of general creditors of the City. Although the City's obligation to make payments under this Guaranty is subject to the conditions set forth above, this Guaranty is on par with other debt of the City supported by the City's covenant to budget and appropriate legally available Non-Ad Valorem Revenues. This Guaranty is intended to have the effect of making available for deposit into the Series 2014 Reserve Account, at such times as may be required to cure any deficiency therein within the time frames described herein, legally available Non-Ad

Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment if necessary, amounts sufficient to cure such deficiency.

The Guaranty is subject in all respects to the restrictions of Section 166.241, Florida Statutes, which provides that the governing body of each municipality shall make appropriations for each fiscal year of such municipality (the "Fiscal Period") which, in any one year, shall not exceed the amount to be received from taxation and other revenue sources, and to payments which are legally mandated by applicable law. The obligations of the City contained herein shall not be construed as a limitation on the ability of the City to pledge or covenant to pledge or use all or any portion of its Non-Ad Valorem Revenues for other legally permissible purposes. The obligation of the City to make the payments contained in this Guaranty within the time frames described herein, is subject to the availability of Non-Ad Valorem Revenues in the treasury of the City and funding requirements for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or which are legally mandated by law; however, such obligation is cumulative and shall carry over from Fiscal Period to Fiscal Period.

**Section 1.3 Guaranty of Payment.** This is a guaranty of payment and not of collection, and during any Guarantor Payment Period the Trustee may, at its option, proceed directly against Guarantor to collect and recover the full amount of the deficiency in the Series 2014 Reserve Account, without proceeding against any other person, or foreclosing upon, selling, or otherwise disposing of or collecting or applying against any property to the fullest extent permitted under applicable laws.

**Section 1.4 Guarantor Payment Period and Payments.** A "Guarantor Payment Period" shall be deemed to occur in the event that the Trustee does not have sufficient funds under the Indenture to make a regularly scheduled payment of principal, interest, or both, on the Bonds, on the Business Day prior to a regularly scheduled interest or principal payment date on the Bonds and pursuant to the First Supplemental Trust Indenture, transfers moneys from the Series 2014 Debt Service Reserve Account to the Series 2014 Interest Account or the Series 2014 Principal Account to make up such deficiency. No payment made by the Guarantor under this Guaranty shall be considered to be a cure of any Developer default under the Lease.

## **ARTICLE II SUBORDINATION OF CERTAIN INDEBTEDNESS**

**Section 2.1 Subordination of Guarantor Claims.** Any indebtedness of District to Guarantor now or hereafter existing, including, but not limited to, any rights to subrogation Guarantor may have as a result of any payment by Guarantor under this Guaranty, together with any interest thereon, shall be, and such indebtedness is hereby deferred, postponed and subordinated to the prior payment in full of all principal and interest on any Bonds then due for payment.

## **ARTICLE III EVENTS AND CIRCUMSTANCES NOT REDUCING OR DISCHARGING GUARANTOR'S OBLIGATIONS**

**Section 3.1 No Impairment of Obligations** Guarantor further agrees, to the extent permitted under applicable laws, that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected or impaired (a) by reason of the commencement of a case under the Bankruptcy Code by or against any person obligated under

documents evidencing the Bonds, or (b) by reason of any payment made on the Bonds or any other indebtedness arising under the documents evidencing the Bonds, whether made by District or Guarantor or any other person, which is required to be refunded pursuant to any bankruptcy or insolvency law; it being understood that no payment so refunded shall be considered as a payment of any portion of the Bonds, nor shall it have the effect of reducing the liability of Guarantor hereunder.

**Section 3.2 Bond Document Modification.** Guarantor further covenants that this Guaranty shall remain and continue in full force and effect as to any modification, extension or renewal of the documents evidencing the Bonds, provided that the prior written consent of the Guarantor shall be required prior to any such modification, extension or renewal that affects the rights and duties of the Trustee set forth in Article V of the First Supplemental Trust Indenture.

**Section 3.3 Waivers.** Guarantor hereby waives to the extent permitted under applicable laws all defenses, offsets and counterclaims which Guarantor may at any time have to any claim against District and/or the Trustee. No act, failure to act, or omission of any kind on the part of Guarantor, District, Trustee or any person shall be a legal or equitable discharge or release of Guarantor hereunder. No failure by Trustee to exercise, and no delay in exercising, any of its rights, remedies, or powers shall operate as a waiver thereof, and no single or partial exercise of any such right, remedy, or power shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1 Waiver of Jury Trial; Service of Process.** EACH OF THE GUARANTOR AND TRUSTEE BY GIVING AND ACCEPTING THIS GUARANTY, AS THE CASE MAY BE, HEREBY (A) KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN REGARD TO ANY LITIGATION OR PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND (B) AGREES THAT ANY STATE OR FEDERAL COURT SITTING IN AND LOCATED IN BROWARD COUNTY, STATE OF FLORIDA SHALL HAVE EXCLUSIVE JURISDICTION OF ANY SUCH ACTION OR PROCEEDING.

**Section 4.2 Successors and Assigns.** Each reference herein to District or Trustee shall be deemed to include its successors and assigns, to whose favor the provisions of this Guaranty shall also inure.

**Section 4.3 Authority.** Guarantor represents that it (and its representative, executing below, if any) has full power, authority and legal right to execute this Guaranty and to perform all its obligations under this Guaranty and that nothing exists to impair the effectiveness of the Guaranty.

**Section 4.4 Notice.** Any notice, demand, request, offer, consent, approval or communication to be provided under this Guaranty shall be in writing and sent by one of the methods hereinafter described and shall be deemed received: (i) the next delivery day after it is deposited for overnight delivery with a nationally recognized and reputable air courier (with electronic tracking being used) addressed to the recipient party at the address shown below; (ii) upon confirmation of receipt of electronic transmission if it is sent by facsimile or telecopier

transmission to the recipient party at its facsimile number set forth below and, in such case, a copy is also sent by one of the methods described in clauses (i) or (iv) of this Section (it being understood and agreed, however, that such notice shall be deemed received upon confirmation of receipt of electronic transmission); (iii) upon transmission by e-mail if it is sent to the recipient party's e-mail address shown below and, in such case (1) the e-mail message is not returned to the sender as being undeliverable, (2) any attachments to the e-mail must be in text, rich text, Adobe Acrobat or Microsoft Word formats (and not in HTML, .exe or other formats), and (3) a copy is also sent by one of the methods described in clauses (i) or (iv) of this Section (it being understood and agreed, however, that such notice shall be deemed received upon sending of the e-mail unless it is returned as non-deliverable), or (iv) the same day it is personally delivered to the recipient party's address shown below. Notwithstanding the foregoing, in the event any notice or other communication as described in this Section is sent by any party hereto to the other(s) by overnight delivery, personal delivery by facsimile/telecopy transmission or by e-mail and it is received by the recipient party(ies) (or delivery is attempted) during non-business hours (i.e., other than during 8:30 a.m. to 5:00 p.m., ET, Monday through Friday, excluding holidays), then such notice or other communication shall not be deemed to have been received until the next Business Day. Any party may designate a different address for receiving notices hereunder by notice to the other parties in accordance with the provisions of this Paragraph.

To Guarantor:                      City of Hollywood  
    2600 Hollywood Boulevard  
    Hollywood, Florida 33022  
    Attention: City Manager's Office  
    Email:  
    Attention: City Attorney's Office  
    [jsheffel@hollywoodfl.org](mailto:jsheffel@hollywoodfl.org)

If to Trustee:                      The Bank of New York Mellon Trust Company, N.A.  
    10161 Centurion Parkway  
    Jacksonville, FL 32256  
    Attention:  
    [lboenish@bnymellon.com](mailto:lboenish@bnymellon.com)

or such other address as either party may from time to time specify in writing to the other in the manner aforesaid.

Copies of any notice hereunder shall also be provided to the District at:

If to District:                      Hollywood Beach Community Development District I  
    c/o Government Management Services-South Florida LLC  
    5385 North Nob Hill Road  
    Suite 370  
    Sunrise, Florida 33351  
    Attention: Richard Hans.  
    [rhans@govmgtsvc.com](mailto:rhans@govmgtsvc.com)

Notwithstanding anything to the contrary in this Section 4.4, the Trustee shall accept and act upon instructions or directions pursuant to this Guaranty sent by the City by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's acting in reliance upon and compliance with such instructions, notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction from the City that is given after the Trustee has acted. The City agrees: (i) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by it and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

**Section 4.5 Miscellaneous.** If any provision of this agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this agreement shall be valid and enforceable to the full extent permitted by law. The failure or forbearance of Trustee to exercise any right hereunder, or otherwise granted to it by law or another agreement, shall not affect the obligation of Guarantor hereunder and shall not constitute a waiver of said right. This Guaranty contains the entire agreement between the parties. There is no understanding that any person other than or in addition to Guarantor shall execute this Guaranty. The captions to the paragraphs are for convenience only and shall not be deemed a part of the Agreement.

**Section 4.6 Merger.** All understandings, representations and agreements heretofore had with respect to this Guaranty are merged into this Guaranty which alone fully and completely expresses the agreement of Guarantor and Trustee.

**Section 4.7 Counterparts.** This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of Guaranty.

**Section 4.8 Amendments.** This Guaranty may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of any party, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. There shall be no amendment of this Guaranty without the prior written confirmation that such action will not result in the withdrawal or downgrade of the ratings on the Bonds from each rating agency then maintaining a rating on the Bonds at the request of the District.

**Section 4.9 Reimbursement of Expenses** Guarantor agrees that, to the extent permitted by applicable laws, Guarantor will reimburse Trustee, as applicable, for all expenses (including reasonable attorneys and paralegals fees and disbursements) incurred by Trustee in connection with the collection of the amounts due hereunder or any portion thereof or with the enforcement of this Guaranty if the Trustee prevails in such legal proceedings.



**Section 4.10 Governing Law.** This Guaranty shall be governed, construed, applied and enforced in accordance with the laws of the State of Florida without regards to principles of conflicts of laws.

IN WITNESS WHEREOF, Guarantor and Trustee have executed this Guaranty as of the day and year first above written.

By authority of Resolution No. 2013-132 duly passed and adopted by the Hollywood City Commission on May 29, 2013.

**GUARANTOR:**

**CITY OF HOLLYWOOD**, a Florida  
municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
Patricia Cerny  
City Clerk

By: \_\_\_\_\_  
Cathy Swanson-Rivenbark  
City Manager

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Jeffrey P. Sheffel  
City Attorney

**TRUSTEE:**

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**

By: \_\_\_\_\_  
Authorized Officer

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